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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,716	04/16/2007	James Edward Delves	DPS-030810 PET-1015US	2244

64065 7590 05/04/2011

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EXAMINER	
VANDEUSEN, CHRISTOPHER	
ART UNIT	PAPER NUMBER
1774	

MAIL DATE	DELIVERY MODE
05/04/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/573,716	**Applicant(s)** DELVES ET AL.	
	Examiner Christopher K. VanDeusen	**Art Unit** 1774	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-12*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1774

Continuation of 11. does NOT place the application in condition for allowance because: Regarding applicants' assertion that the structure of Johannes '142 does not provide a vortex in the solvent and/or solute, Johannes '142 teaches a flow pattern that resembles a whirlpool (as recited in Merriam-Webster 1; figures 1-2 show that the first fluid would make a whirlpool path between inlet tube 12 and outlet tube 26). Further, Merriam-Webster definition 2b, which was noted by the examiner in the Final Rejection mailed 02/24/2011, remains a reasonable interpretation of the term "vortex". Whether or not it is the most common of the definitions is irrelevant. Applicants have not argued that Merriam-Webster definition 2b is an unreasonable interpretation. The same holds for the further citations of "vortex" definitions - while these are all reasonable, and most are met by the cited prior art, applicants have not argued that the cited interpetation is unreasonable.

Applicants further note that the mixing of the solute and solvent is done by a different flow pattern. This is irrelevant, as the mixing of the two fluids is not claimed to be achieved by vortex, and unclaimed limitations need not be addressed by the prior art or in a rebuttal. The formation of a vortex in the first fluid is sufficient to meet the limitations as claimed.

"Teaching away" is not a relevant consideration in rejections under 35 USC 102(b).

Applicants make several other arguments regarding the differences in the mixing mechanisms between the instant application and the cited prior art. Again the examiner notes that a mixing mechanism is not instantly claimed and the cited prior art teaches a structure which meets the claimed limitations. The vortex formed by the first fluid alone is sufficient to meet the claimed limitations (col. 2, lines 41-46). Differences in terminology do not equate to differences in structure or flow pattern. The examiner maintains that the first fluid forms a vortex-shaped flow pattern in the annular mixing chamber. The mixing mechanism remains irrelevant to the discussion as no mixing mechanism is instantly claimed.